

**In The Matter of Arbitration  
Between:**

**Minneapolis Public Schools, Special School District No. 1,  
Employer  
and  
Karen Hammel,  
Grievant**

**BMS Case Number 16-VP-0806  
(Karen Hammel)**

**Carol Berg O'Toole  
Arbitrator**

**Representatives:**

**For the Grievant:  
Karen Hammel  
Education Consultant  
154 County Road B2 E  
Little Canada, Minnesota 55117**

**For the Employer:**

**Charles E. Long, Assistant General Counsel  
Anje Flowers, Assistant General Counsel  
Office of the District General Counsel  
Special School District No. 1  
Minneapolis Public Schools  
1250 West Broadway Avenue  
Minneapolis, Minnesota 55411-2533**

**Witnesses:**

**For the Employer:  
Daphne Breauxsaus  
Liz Carlson  
Lindsey Horowitz  
Emma Hixson**

**For the Union:  
Linda Henn**

**Tam Friestad  
Brad Aubrecht  
Tia Jamison  
Colleen Knuth  
Jackie Wixo  
Karen Hammel**

### **Preliminary Statement**

The hearing in the above matter commenced on May 24, 2016 at 9:06 A.M. at the Bureau of Mediation Services, 1380 Energy Lane, Saint Paul, Minnesota, 55108-5250 and concluded at approximately 6:00 P.M. on the same day. The parties involved are Minneapolis Public Schools, Special School District No. 1 (Employer) and Karen Hammel (Grievant), who is a continuing contract teacher. Grievant choose to represent herself. The parties presented opening statements, oral testimony, oral argument, exhibits, nd post hearing briefs. All exhibits offered were received with the arbitrator's admonition that, depending on the exhibit, some would be given less weight. Post hearing briefs were filed by both parties. The arbitrator closed the hearing upon receipt of the last post hearing brief on June 23, 2016. .

### **Issue Presented**

The issue was not agreed on so the arbitrator fashioned it as follows:

**Issue:** Whether the Employer established, by preponderance of the evidence, cause for Grievant's termination, pursuant to Minnesota Statutes Section 122A.41, subdivision 6(a)(1) and (3) for conduct unbecoming a teacher, insubordination, and inefficiency in teaching?

## **Jurisdiction**

Minnesota Statutes Section 122A.41, subdivision 13 provides the Grievant with a hearing before an impartial neutral. The parties selected the undersigned from a list supplied by the Bureau of Mediation Services. The Collective Bargaining Agreement (Agreement) between the Employer and the Minneapolis Federation of Teachers, Local 59, which is the exclusive representative for teachers, incorporates the Minnesota Statutes, 122A. 41 in Article V. (Grievant's Exhibit 2)

## **Employer's Opening Argument**

The Employer opened by stating that Grievant is a former employee of the Employer who is subject to Minnesota Statutes 122 A.41, subdivisions 6(a)(1) and 6(a)(2). She was terminated from her job for conduct unbecoming a teacher, insubordination, and inefficiency in teaching. The Employer progressively disciplined Grievant. The Employer stated that Grievant had a pattern of behavior including improper actions towards staff and students. The Employer suspended Grievant for one day for conduct unbecoming a teacher. Grievant again engaged in inappropriate and unprofessional conduct. This behavior resulted in a five day suspension. Grievant was given a final warning. This final warning was followed, six weeks later, with Grievant's unprofessional conduct and disrespectful behavior towards students and staff and a disregard student privacy. The Grievant was terminated.

The Employer repeatedly advised Grievant that she was in trouble for improper behavior. The Employer observed the requirements of the statute. Throughout the progressive discipline, Grievant showed no change in behavior, nor any inclination to

change. In light of that, there is no lesser penalty than termination that would be appropriate.

### **Employer's Case in Chief**

#### **Witness: Daphne Breauxsaus**

The first witness called by the Employer has worked at Transition Plus for three years as a Project Manager. Breauxsaus described Transition Plus as a school site serving 18-21 year-olds who have disabilities. She helps students with their behavior, job skills and Individual Education Plans. Her job includes working with support staff and special education teachers. Breauxsaus said she had worked with Grievant.

Breauxsaus described an incident at work on Friday, November 20, 2015 when students went on a field trip to downtown Minneapolis. Breauxsaus indicated that Transition Plus did field trips on Fridays. On this Friday, Grievant, after discovering her cellular phone was missing, stayed back. Grievant had Libby, the secretary at Transitions Plus, call the staff on the bus to tell them Grievant had lost her phone and the students needed to be searched.

Staff members Brad Aubrecht, Colleen Knuth, and Liz Carlson were on the bus and got the call from Libby. Grievant said she had a "fit bit" on her wrist that she thought could connect to her phone. Breauxsaus said it was typical to do a search when a phone is missing. Grievant met the bus which had stopped because of the call. Aubrecht did a search of all students except two male students who refused to submit to the search and walked away. Grievant walked down the aisle of the bus, but the "fit bit" failed to locate the phone. Grievant walked down the block and across the street where the two boys had gone, but did not find the phone. Breauxsaus testified that she and

the Grievant went back to the school site. Grievant told Breauxsaus that she was upset. Breausaus said the Grievant did not seem to be concerned about the students.

Breauxsaus said she was at work on Wednesday, January 20, 2016 when Grievant came into the office. She described the office as open and accessible. She said that Lindsey Horowitz, the administrator, was there, as well as Libby, and the Grievant. Breauxsaus said she heard what went on. The student ("D.") was in the office to talk to Horowitz. Breauxsaus described the student as unhappy because he had been told he could not take a class at Transitions Plus because he was going to college. The student ("D") and Horowitz had drawn up a contract, with the student getting a copy, Horowitz getting a copy, and a copy placed in Grievant's mailbox. Breausaus said the student left the office.

Shortly after the Grievant appeared with a piece of paper (the contract) in her hand. Breauxsaus described Grievant as not happy with the way the contract was drawn up. The student came into the office area. Breauxsaus stated that with everyone present, Grievant said she was not happy and that Horowitz should let her know when changes were made. Horowitz stated that if the Grievant wanted to talk about it, it should be done in the conference room. The student asked Horowitz how she let staff talk to her like "that." Horowitz stated again that if Grievant wanted to talk about it, it should be done in the conference room. The Grievant then ripped up the contract and walked out. Breauxsaus said she thought the Grievant should find other ways to act. She termed the behavior as unprofessional.

On cross examination, Breauxsaus stated that when directed towards the conference room, Grievant said “No”. Breauzsas characterized Grievant’s volume of voice as louder than “now”.

On redirect, Breauxsaus was asked if she had ever observed a similar incident. She replied that she had not.

**Witness: Liz Carlson**

Carlson testified that she has worked for the Employer since 2003, first, at a middle school with Emotional Behavior Disorder students, second, at Harrison, third, as the program lead in Emotional Behavior Disorder from 2005 to 2015 and, finally, as a teacher at Transition Plus from 2015 to the present. She teaches four classes.

Carlson testified that she was at work at Transition Plus on November 20, 2015. She said the field trips on Fridays were usually to an auto mechanics site and to Summit Academy. She stated that three other teachers were on the bus with her. She said that after the call regarding Grievant’s phone, the bus was stopped and students were asked to empty their pockets. Carlson said the students were not happy but complied with the request except for two who refused and walked off and around the corner. When the two students got back, the staff assured them they were not after their “weed”, which Carlson characterized as a chronic problem for these two students. Carlson said that the search procedure was very uncomfortable. Carlson testified that Grievant came and got on the bus. Carlson stated she thought someone might have said to Grievant that they didn’t find the phone. The two students came back at this time. After Grievant walked through the bus, the field trip resumed.

Carlson stated that later she was in her classroom with students. They were watching a movie and Carlson was at her desk. Grievant came into the room and said she was angry. Carlson thought she was angry with her and was blaming her. Carlson stated that it became personal at that point. The Grievant was loud enough to draw the attention of two students who were down the hall and around the corner. They heard Grievant mention their names. The students came to her classroom. Carlson testified that Grievant then got into a heated argument with the students which resulted in back and forth yelling with Grievant yelling and the students yelling.

Frank, the Behavior Person, came to Carlson's classroom and said he couldn't understand how the Grievant was blaming Carlson. The social worker she consulted told Carlson she should report Grievant's actions to administration and was shocked to hear that the interaction happened to the students. The social worker told her that she needed to see Horowitz. Carlson testified that she was shocked at the whole incident and felt very emotional about it. Carlson reported the confrontation between the Grievant and the students to Horowitz. Carlson said she was shocked and upset. Carlson told Horowitz she was upset and asked Horowitz if she could leave early.

On Monday following the incident, Grievant and Carlson spoke and thought they could go forward. Carlson was asked if she thought Grievant's behavior was appropriate or professional. She said "No".

On cross examination, Carlson was asked if she had seen Grievant yelling. She stated she had. When asked about violation of data privacy issues, Carlson said she didn't know, but said the incident wasn't very private and she overheard comments

about students. She also testified that the term she heard was “shocking” and that the students really took it hard.

**Witness: Lindsey Horowitz**

Horowitz testified that she has been the administrator at Transition Plus since September, 2015. Horowitz testified she has worked previously in St. Paul and has more than ten years of experience. As the administrator of Transition Plus, she oversees the day to day operations and, as lead administrator, guides the instructional practice. Horowitz testified that she knew the Grievant and was her supervisor. Horowitz testified that she was familiar with the disciplinary record of the grievant which included a directive from Horowitz’s predecessor, Colleen Schatz, on March 23, 2015, a request by Schatz for an explanation and a response from Grievant, and a Loudermill/Due Process Meeting and a notice of one day suspension by Schatz for insubordination and leaving work early. Employer’s Exhibit 2, 3, and 4. Horowitz testified she thought the discipline was appropriate for the unprofessional and disrespectful actions by Grievant. Horowitz was asked about the import of professional behavior by staff. Horowitz said that at Transitions Plus the staff teaches students how to get jobs and be professional so staff members need to be role models of that behavior.

Horowitz identified Employer Exhibit 8, a mass e-mail about a student, sent to all staff in the building, itinerant staff and individuals who didn’t have a need to know about the student. Horowitz said there was no redaction of the student’s photo or name and she considered it very inappropriate. Horowitz discussed it at a staff meeting but had no response from the Grievant.

Horowitz identified Employer Exhibit 9, the due process meeting notification to address Grievant's performance problems. Horowitz explained that the due process letter went out because of concerns about Grievant's performance including the phone incident with the yelling at staff and students and inappropriate accusations towards students and staff. When asked what Horowitz found unprofessional about Grievant's behaviors, she said "Everything." The Employer's counsel asked if being angry was a reasonable excuse. She said, "No".

Horowitz asked the Grievant to come in to discuss the incidents but Grievant instead wanted to walk through the building and talk. Horowitz said that Grievant never mentioned anything about her inappropriate behavior towards staff. Horowitz thought that was surprising because she knew another teacher at Transitions Plus wanted to quit and leave because of the actions. Horowitz said she had never had a similar incident.

After the due process meeting Horowitz met with the union leader, the social worker and the Grievant to discuss the matter further. The Grievant told the union member to leave the meeting. Horowitz told the Grievant to be professional. The Grievant said she didn't understand and didn't feel like she was yelling at people. Horowitz again directed the Grievant to be professional. Horowitz told the Grievant that her yelling at Carlson and students was unacceptable. Horowitz described Grievant's response as defensive, "not agreeing" and not seeing herself as yelling.

Horowitz identified Employer's Exhibit 9, 10, and 11 as the Loudermill/due process meeting, the explanation of its contents to Grievant and an opportunity for her to explain, and the December 15, 2015, Final Warning with the five day suspension.

Horowitz characterized these exhibits as the last chance before termination. She testified that she had witnessed the behavior described in the warning and agreed with the discipline.

Horowitz identified Employer's Exhibit 12, the notice of the due process meeting scheduled for January 22, 2016. When asked what prompted this meeting, Horowitz described an incident with a student at Transitions Plus who was very upset about a schedule. Horowitz and the student sat down to work up a new contract. The student was going to be recommended to go to a postsecondary educational institution, Minneapolis Technical and Community College, but still wanted to take math at Transitions Plus.

After the contract had been prepared and distributed Grievant appeared and said the new contract was unacceptable. Grievant refused to go into the conference room to discuss it. Grievant then ripped up the contract in front of the student. Grievant threw the ripped up contract into the waste basket. Horowitz stated that the student got quite a kick out of the interaction and was smiling.

Grievant went into the next room to "cool" off. When asked about the incident, Grievant said the contract was unacceptable. Horowitz characterized Grievant as showing no remorse and not apologizing. Horowitz said she made no acknowledgment of the behavior and expressed no willingness to change her behavior. In the due process hearing, Horowitz testified that when told about the administrative Leave/Suspension, she nodded her head acknowledging no objection to the suspension. When asked if she agreed with this action, she said, "Yes". Horowitz was asked if she agree with the termination notice, Horowitz said that she did because the

Grievant violated the previous warning. Horowitz said that a lesser penalty was not appropriate because the Grievant had not changed her behavior and that returning to her previous position was not effective for a professional workforce or for students. Horowitz said Grievant could not control herself and that ability was “huge, huge” when working with students like those at Transitions Plus.

On cross examination, Horowitz stated that she had no information about Grievant or anyone else before she became the administrator. Horowitz stated that she thought Grievant’s behavior and the incidents leading to the disciplinary measures were not isolated incidents and not simply items that could be attributed to “culture”. She testified that she was continuously looking at whether remediation was occurring. Horowitz stated that at staff meetings Grievant’s behavior was not appropriate. Horowitz was asked about obligations under the Agreement. Horowitz said that she presented the incident, asked for Grievant’s side of the story, and allowed the Grievant to have a colleague present. Horowitz stated that she knew Grievant was on a teachers’ contract, held a license as director of special education and had “many years of experience”.

Horowitz described an Instructional Leadership Team Meeting where she came in with a reboot and Grievant completely distracted everyone.

Asked if she was aware of Grievant’s relationship with students, Horowitz said that she was familiar with some positive relationships and some not positive relationships. She stated that she had been given information about racism by the Grievant towards students. She said the information was given to her by students.

**Witness: Emma Hixson**

The next witness was Hixson who currently serves the Employer as Senior Employment Relations Associate. She was previously Executive Director of Employee Relations with the Employer for seven to eight years. In her current position, Hixson counsels with the administration, handles employee grievances and negotiates labor agreements. Hixson identified and discussed Employer's Exhibits 5, 6, 7, 10, 13, 16, 17, and 18. She was asked what "final warning meant". Hixson stated that a final warning meant that a further incident will result in discharge. Hixson stated that Grievant's one day suspension, five days suspension/administrative leave, and discharge "seems appropriate" for "unprofessional behavior. Hixson was asked about the language of the Agreement about collaboration and coaching. She said she was familiar with the language and it was not part of the disciplinary procedure. Hixson testified that it was not necessary to go through the coaching and collaboration part of the Agreement before discipline was started.

On cross examination, Hixson explained that discipline is separate from mediation or coaching. Hixson explained that the Teacher Tenure Act was applicable when discipline started. She stated that part of the reserved management rights fall within that process. She also explained the Teacher Code of Ethics. When asked about protection from unfair treatment, Hixson testified that the reference in the Agreement to the Teacher Tenure Act provided safeguards. Hixson discussed Grievant's data practices violations in October, 2015 where private student data was shared inappropriately in a widely broadcasted e-mail. Hixson explained that the Teacher Tenure Act was applicable when discipline started. Hixson stated that the Teacher Tenure Act

established grounds for discharge including conduct unbecoming a teacher and inefficiency in performance.

On redirect, Hixson explained that Grievant's inappropriate communication and rude and unprofessional behavior also violated the Teachers' Code of Ethics, which is referenced in the Agreement.

### **Grievant's Opening Argument**

Grievant described her educational background and training. She is a licensed teacher for students with Emotional Behavioral Disorder and Developmental Cognitive Delays. Grievant also holds a Special Education Director license. She holds a Doctorate in Educational Policy and Administration from the University of Minnesota and a teaching degree from University of Minnesota at St. Cloud. Her experience includes teaching as well as setting up the Teach for America program at Hamline. Grievant has researched and published on the subject of bullying. She has been involved with the Minnesota Education Association on social justice in schools. Grievant described herself as being a "loud and passionate person" who has struggled with [the] delicacies of meeting other people". She said she had been in administration for three years, but that it didn't work out. She has been working for Minneapolis for ten years.

Grievant said her discharge was related to her objections to the use by the school district of a racist curriculum, Life Centered Career Education. She had one disciplinary action resulting from her opposition, particularly disrupting a meeting. The discipline is no longer in her file, although the mediation related to that discipline is still in her file. Grievant said that in four months, her 22 year career ended. Grievant comes to the arbitration as a "highly-trained, competent teacher, pushed out".

## **Grievant's Case in Chief**

### **Witness: Linda Henn**

Henn is the school nurse at Transitions Plus and serves the entire building. Henn is a Licensed Practical Nurse and has been for three years. Henn testified that Grievant is her boss. Henn is a union representative. Henn testified that all the employees are under [the Agreement with] the Minnesota Federation of Teachers. Henn was in Colorado at the time of the January 20, 2016 incident.

On cross examination, Henn testified that she did not know anything about the data privacy violation by Grievant or any of the other disciplinary actions. She did receive the e-mail by Grievant about Student ("D") that was alleged to be a Data Practices Act violation. On redirect, Henn said she attended the meeting with the union on September 20, 2015 which included Deb Corhouse, an attorney; Mike Leiter, union representative; Bonita Jones. Henn testified that Leiter explained the reason to call the meeting and his position.

### **Witness: Tam Friestad**

Friestad is an SEA whose job is to assist with students. She characterized Grievant's relationship with students as "amazing".

On cross examination, she stated that she was in her first year at Transitions Plus. Friestad testified that the Grievant would "call students out...for their own good." When asked if she had ever heard the race-tone, Friestad said she had when Grievant is joking around. She also said she was uncomfortable with the search of the students for Grievant's phone and said it could have been handled differently. She testified that students "bring race into it" and that they are sensitive to it. She also said that students

use race more loosely. When she was asked about a November 20, 2015 and a commotion with students, she testified she did not recall. Friestad said she didn't hear Grievant. Then, she testified "I recall now." She was asked about a note she had written previously saying she heard the commotion.

**Witness: Brad Aubrecht**

Aubrecht testified that he was an Emotional Behavioral Disorder teacher and also licensed as a social studies teacher. He has been at Transitions Plus for six years and was working the day of the phone incident. He said Grievant was upset because the phone search was not very effective. He said after the incident, Grievant came to him and apologized. Aubrecht was asked by Grievant if he had heard her use names of the two boys suspected of the phone theft. He said there was "never any public or data privacy issues". He also stated that it might have been possible that he wouldn't hear in his classroom. Aubrecht said that Grievant pushed students hard and that Grievant had high standards. He described Grievant as being "stern, clear, and directive" for some students.

On cross examination, Aubrecht said that yelling might be appropriate with students. On redirect, Aubrecht said he had seen Grievant get "frustrated". On re-cross, Aubrecht said he heard yelling on November 20, 2015 but he wasn't in Carlson's room and didn't know anything about the January 20 incident.

**Witness: Colleen Knuth**

Knuth testified that she is an Associate Educator at Transitions Plus who plans things meaningful to students. She works as a team. She testified as to the bus/phone incident and said that she did not hear the grievant yell at Carlson. Knuth testified that

she knew some “amazing” things about the Grievant: she was very prepared; she held high expectations. She noted that people asked the Grievant to deal with a problem and that students knew she held them to a high standard. Knuth stated that sometimes students pushed back and didn’t like the Grievant at first. Knuth said that Grievant made the team cohesive and she had seen the Grievant frustrated.

On cross examination she was asked about the November 20, 2015 incident involving Carlson. She stated she didn’t hear any yelling, but was not in the room. Knuth testified that she knew nothing about the January 20 incident.

**Witness: Tia Jamison**

Jamison testified that she is a special education teacher at Transition Plus and has been teaching twenty plus years. On March 30, 2015 a new policy was instituted which required signing in and out. Jamison said that not everyone followed the policy and that others who didn’t follow the policy didn’t get disciplined. Jamison testified that Schatz had a sense of humor, but that Horowitz’s communication was frustrating because of lack of response. Jamison testified that she was not aware of prior instances where Grievant had left early.

**Witness: Jackie Wixo**

Wixo testified that she had been working as a teacher with the Employer for ten years. She testified that she had due process issue herself where she was notified less than 24 hours before a hearing and never told the reason for the hearing. She said she had never felt it was an open system. In regard to her own incident she never got the incident resolved but got no discipline. On re-cross examination, she testified that the

discipline was for her being late with the paper work (Individual Education Plans) for students.

**Witness: Grievant**

Grievant was in charge of fourteen students at Transition Plus in 2016. She testified that she felt targeted in the fall of 2012 over her objection to the change in curriculum. At the end of 2013 the school district had to buy a new iteration of the curriculum, but ended up never using it. Grievant stated that her relationship with Schatz became strained and that it was difficult to take issues to her. Grievant identified Grievant's Exhibit 4. She said on that day she impulsively left at 2:30 P.M. She questioned how many other people signed in and out and characterized the treatment as being very inconsistent. She sent an e-mail to Schatz which she characterized as "snarky".

Grievant discussed a second disciplinary incident involving unprofessional conduct which she termed the cell phone incident on November 20, 2015. She described the incident with Carlson and said she thought she only saw one student watching the movie. Grievant said she didn't realize how Carlson felt about their exchange. Grievant described physically running into students and saying "Get out of my face." Grievant said that on the following Monday the student ("D") came into her classroom and talked to her, saying he was scared about transitioning to college. Grievant said that Horowitz had dismantled everything "we had done". Student "D" was ready for Minneapolis Technical and Community College and was a smart individual. Grievant said the student was highly unstable and doing drugs. The Grievant said she felt as though Horowitz was "pushing him over".

Grievant said that the easiest part of her job was being with students and the hardest part was communication with team members and politics. Grievant felt that ten years had been thrown away in four months. When asked what protections had not been afforded her she said: “communicating” with Horowitz, communicating staff to staff, communicating staff to administrators regarding conflict, and the right to professionally develop and receive flexibility. She described the data privacy rules as confusing and testified that, “I didn’t violate any privacy statutes...e-mailing was used all the time...student (“D”) was in the hallways so everyone needed it [the e-mail].”

On cross-examination, she was asked if maintenance people, kitchen people, or customers needed to see the e-mail. She said “no”. She was asked if a Notice of Deficiency was discipline. She said it wasn’t in her file and that mediation was still going on. Grievant was asked if she had received the various disciplinary notices, including Employer Exhibit 11 and 19, the five day suspension and the Notice of Recommendation for Discharge for inefficiency in teaching, insubordination, or conduct unbecoming a teacher. She said she had received them. The Grievant was asked if it concerned her that she had been speaking in front of another student. She answered that she was speaking loudly she didn’t use names and the student was scared about making the transition. Grievant said she had commented to the student, “You don’t belong here” was treating a student like an adult. On redirect, the Grievant stated that in a couple of years things had changed “so much.”

## **Discussion**

### The Standard

The neutral's first order of business is an assessment of whether or not the incidents forming the basis for the discharge occurred. In making this assessment, the neutral is instructed by statute to determine by preponderance of evidence whether the causes for the discharge occurred. Minnesota Statutes 122A.41, subdivision 13(c). The neutral examines which witnesses and what exhibits are more credible and determines whether the Employer met its burden of proof. After that assessment, the neutral determines whether the discharge is fair and reasonable under the circumstances.

#### Did the Acts Occur?

The following acts are alleged by the Employer to form the basis of the discipline:

1. Conduct Unbecoming a Teacher

Grievant repeatedly yelled at staff, including her boss. Testimony of Carlson and Horowitz. The characterization of behavior as inappropriate and non-professional by the Employer is buttressed by the actions of Carlson, who found herself so shaken by Grievant's behavior that she needed to go home. Carlson testified that she had never made such a request before. She asked her boss, Horowitz, for permission to go home. Carlson Testimony.

Grievant yelled at Horowitz during the student ("D") incident, stomped away from her and ripped up the contract. Horowitz Testimony. Horowitz had worked with the student to develop a new contract addressing his concerns. The comment of the student, questioning how Horowitz let the Grievant talk to her in "that" manner, indicted he felt the behavior of Grievant was out of line. Carlson and Horowitz Testimony. In her defense, Grievant called a number of peer or subordinate witnesses who were loyal, but could not provide proof because they were in Colorado or out of hearing or didn't recall.

Testimony of Henn, Friestad,

Aubrecht, and Knuth. (Wixo and Jamison were also called but did not have direct testimony on the actual grounds.) Grievant herself admits the exchanges but characterizes them as passion and frustration. The Grievant states that she has previously had trouble with communication. Grievant Testimony.

Horowitz testified that Grievant's loud side conversations in staff meetings that she was conducting were so disruptive that Horowitz had to stop one of the meetings and admonish the group. Grievant knew it was her behavior that caused the disruption because she came in to talk to Horowitz after the meeting. Horowitz told her the behavior was unacceptable and she needed to stop it. Horowitz Testimony.

Grievant yelled at students on the day of the missing phone incident. Two of the students overheard her yelling at her co-worker, although they were down the hall and around the corner. When they came to the room where Grievant was carrying on, a shouting match between Grievant and the two students erupted. It got so bad another staff member had to break it up. Carlson Testimony.

## 2. Violation of Student Privacy

Employer Exhibit 8 and the testimony of Grievant shows unequivocally the violation of student privacy. Student privacy is governed by both state and federal law, Minnesota Government Data Practices Act, Minnesota Statutes Section 13.32 and Family and Educational Right and Privacy Act, 20 U.S. C., Section 1232g and 34. C.F.R., Part 99, commonly known as FERPA. The student's picture and description of him as highly argumentative, confrontational, negative, and manipulating is hardly information that needs to be widely broadcast. The Grievant herself acknowledged that

some of the recipients of the e-mail were inappropriate. Grievant even admitted that she did not know who all the recipients were on the list-serve she used to broadcast the information. The testimony of Horowitz, proved that the e-mail was sent to individuals that were not usually in the building and were non-instructional employees.

A second violation of student privacy occurred related to the lost phone. The incendiary confrontation by Grievant to Carlson was conducted in front of at least one other student (the Grievant said one, the Employer says two) and heard by two others who were down the hall and around the corner. Grievant repeatedly used the names of the two students she thought were responsible for the loss of her phone. Carlson Testimony.

### 3. Insubordination

Grievant refused to log her attendance and work a full day in violation of Schatz's written directive. When asked for an explanation, Grievant admitted in an e-mail to her boss, Schatz, that she left work site in disrespectful, rude, and unprofessional language. Employer Exhibit 3.

Grievant refused Horowitz's two directives to go to a private conference room to discuss the student ("D") contract. Horowitz Testimony.

"Insubordination is a constant or continuing intentional refusal to obey a direct or implied order, reasonable in nature, given by and with proper authority." *Ray v. Minneapolis Board of Education, Special School District No. 1*, 202 N.W.2d 375, 378 (1972). These three directives were reasonable in nature. Grievant had been told in writing to log in and log out and to put in a full day. Employer Exhibit 2. They were

given by two bosses who had the authority over Grievant. They were clear and direct orders. All three were intentionally disobeyed and constitute insubordination.

#### 4. Ineffective Performance

Grievant in the midst of the conflagration about who should be writing a contract with a student told the student (“D”) that he could not come to school and he was not welcome. Horowitz Testimony. Neither of these judgments was hers to make alone and in defiance to her superior. They may well have adversely affected a vulnerable person who was worried about his transition to college.

Grievant also put her pecuniary interests above the two students she thought took her phone. All of us lose phones or have them stolen. Cell phone get smashed and waterlogged. In the process, we incur a small national debt. But, it is not the end of the world and certainly not cause for ill behavior by one of the adults in the room. No good teaching or role modeling occurred here, nor were the interest of the student adequately considered.

The following are claims made by Grievant in an effort to overturn the discharge.

#### 1. Due Process

Grievant states that the Employer did not provide due process. The exhibits alone show due process meetings on April 8, 2015, Employer Exhibit 4, December 9, 2015, Employer Exhibit 9, and January 23, 2016, Employer Exhibit 12. Grievant testified she was notified. In addition, Grievant was notified of the two suspensions and termination as well as the grounds for the termination Employer Exhibit 14, 15, 16, 17, and 18. The Grievant still claims she didn’t know she was in trouble and couldn’t understand how her behavior was unprofessional. Grievant’s claims are not credible in light of the evidence.

Grievant herself testified that she was warned by the Union, whose representation she refused, that she was in real trouble.

## 2. Unequal Treatment

Grievant maintains that she was the only one that got fired for Schatz's logging in and logging out directive. Grievant testified that two employees didn't sign out and didn't get disciplined. Exhibit 4 purports to show two who did not get disciplined for not signing out. There was no testimony offered that these employees failed to sign out, left early, and gave a disrespectful, "in your face" answer to Schatz when asked to explain. Grievant was disciplined for more than a failure to log out. She left work despite the clear directive that she should put in a full day. There was vague testimony from Grievant's co-workers that alleged Grievant was treated more harshly. I found that testimony not on point in addressing the main transgression: leaving work early. .

## 3 Problem Supervisor: Horowitz

Grievant implied in her testimony that the culture had changed and things had been just fine prior to Horowitz assuming the leadership role. Grievant wrote in her Post Hearing Brief that Horowitz had "dismantled all we had done," especially in the case of one student ("D"). Grievant claimed that ten years was thrown away in four months. The facts show that Grievant's disciplinary troubles started with Schatz in 2015, not just the last four months and not just with Horowitz. Grievant stated in her Post Hearing Brief that the administrator prior to Horowitz "left us to do our jobs. She was not necessarily interested in changing anything and kept her door closed to most requests and problems. It was an arrangement that worked for a long time." Grievant testified, "So, why would a brand new administrator move to fire a tenured,

successful and valuable teacher within four months of hire?” This argument fails in the face of her prior discipline from the previous administrator. It wasn’t all due to the new administrator, Horowitz. Two administrators over two periods of time saw problems with Grievant’s performance.

#### 4. Horowitz’s Failure to Communicate with Grievant

The preponderance of the evidence shows repeated refusals of the Grievant to discuss her problems, whether it be in a private conference room or elsewhere. Grievant inappropriately laid the groundwork for her defiant attitude when she said. It is amazing that Horowitz kept talking to Grievant about the problems, given the defiant and disrespectful reaction by Grievant. Horowitz Testimony.

#### 5. Failure to Coach, Collaborate, and Develop an Improvement Plan.

Grievant claims that the discharge should not occur because she had no chance for the coaching and collaborative processes outlined in the Agreement. Grievant’s Exhibit 2. The majority of the provisions Grievant depends on are not unlike mission statements and aspirational goals frequently found in the beginning of agreements before the actual articles start. This is so in the instant case. Article 1, entitled “Collective Bargaining Agreement: Publication, Duration, Board Rights” starts right after the provisions heavily relied on by Grievant.

The Agreement that Grievant relies on also incorporates Minnesota Statutes 122A.41. Subdivision 6 (1) and (3) and the Teacher Code of Ethics, which the Employer says is the operative language for this matter. Hixson’s testimony was right on point. When conduct unbecoming a teacher, insubordination, and inefficiency in teaching occurs, the statute and its requirements for notice take over. Hixson Testimony. You

don't talk about fire prevention and the newest technology in smoke alarms in the midst of a burning building.

6. The Real Reason for the Discharge is Retaliation for Grievant's Objection to a Curriculum Plan

Grievant blames all her current troubles on her opposition to the Life Centered Career Education test and accompanying curriculum four years ago under Schatz and the Director of Special Education, Martha Amundson. This is too remote in time and unrelated to current grounds for the discharge to have a real nexus, let alone be the cause. Grievant blames mostly Horowitz. That doesn't make sense. She wasn't even in Minneapolis when this curriculum was introduced. And then, the curriculum changes were abandoned. Who know, maybe Grievant's objections were heeded. But to say that her stance against a curriculum plan is now resulting in her discharge because of conduct unbecoming, insubordination and inefficiency is too great a stretch for this neutral.

### **Finding**

I find the preponderance of the evidence weighs in the Employer's favor. I find that Grievant did the acts the Employer claims. She was insubordinate, inefficient in teaching and engaged in conduct unbecoming a teacher.

Is the discharge fair and reasonable?

Grievant denied nearly every claim. The Employer stated that there was no remediation or efforts to change behavior they observed by the Grievant. I agree. The evidence shows that Grievant made no effort to change. In *Barnes-Griswold v. Ind. Sch. Dist. No. 625. St. Paul*, 3-TD-6 (2003) (Ver Ploeg, Arb.) insubordination was one of

the grounds for discharge. The arbitrator accepted the argument that insubordination was an all-or-nothing matter for which there is no such thing as gradual improvement. Id. At 55.

The Grievant still holds the view that her method of dealing with students was correct and professional. Grievant says on one hand that the student privacy statutes are confusing, but then claims in a blanket statement that she violated none of them. Grievant did not need a lawyer's understanding of the applicable statutes. Simple common sense suggests that you don't bandy about and indiscriminately broadcast a picture of a student and information about his problems and behavior. She claimed in the mass e-mail that she needed help dealing with him, at least initially, but then, arrogantly prescribed the solutions. If Grievant's personal information had been spread to everyone, she would have been rightly outraged. In the cross examination, she agreed that broad classes of people did not need to know. Even more incredible, Grievant said she didn't know who was included on the list serve she used for the broadcasted e-mail..

What makes Grievant's conduct unbecoming a teacher so egregious is that the student population she chose to work, let alone any student population, needs cool, calm, fair-minded, and respectful models. Many say that modeling is the most effective form of teaching. One who "loses it" over a cell phone or the authorship of a contract, levies accusations against young people (without the due process she demands for herself), hurls blame against a co-worker, and loudly disrupts a professional meeting her boss is conducting is hardly modeling good behavior. Most people don't easily change their passionate nature.

Discharge or demotion based on a teacher's personal behavior are typically characterized by "conduct unbecoming a teacher (cites omitted) and have less involved remediation efforts." Ver Ploeg, Christine D. (2004) "Terminating Public School Teachers for Cause under Minnesota Law", *William Mitchell Law Review*. Vol. 31: Iss. 1, Article 9.

I find credible Horowitz assessment of the unwillingness or inability of Grievant to be remediated. She did not think it possible. I saw nothing in the Grievant at any point in the arbitration that suggests the Horowitz assessment is wrong. The only fair and reasonable penalty is discharge. In this arbitration, the neutral's choice is discharge or reinstatement, as neither party has suggested a lesser penalty. Minnesota law denies the arbitrator the authority to select a lesser penalty unless one or the other party proposes such. Minnesota Statutes 122 A. 40, Subdivision 15(c) (2002).

There is no doubt that Grievant is bright and aptly trained. She doesn't seem to know the role of a boss and the role of a subordinate and how they differ. Grievant stated in her Post Hearing Brief that she has been fired twice before the instant case. Now, two supervisors, at two separate periods in her career, got in the way of this employee. The first, Schatz, announced and implemented a new accountability measures, logging in and logging out, and working full days. Schatz made it very clear to the Grievant about what her obligations were. Employer Exhibit 2. Grievant not only violated that directive, but when asked to explain, was defiant and disrespectful in her admission that she just left her work station, because she determined it was the best course of action. The second supervisor gave her a number of directives which she

defied. This is not a one-time, hot-headed incident or the idiosyncrasies of one, new supervisor. The problem lies with Grievant.

Grievant signed her pre-hearing correspondence as "Consultant". The Grievant will likely do well in the consulting role she has now undertaken. She described herself as passionate. She is. Being her own boss, deciding and delivering advice and counsel to a single client, one at a time, may be just the career she is meant to do. The good thing about consulting is that you work with many different people who are separately your clients. If you offend one or are disrespectful, rightly or wrongly, another client may never know. It also allows the consultant to select people to work with that understand her style and find it brilliant and helpful. Hopefully, the Grievant will view this termination not as a lifelong indictment of one's character as much just a bad fit. Grievant now has a chance to succeed in this new venture and hopefully will.

### **Award**

the Employer established, by preponderance of the evidence, cause for Grievant's termination, pursuant to Minnesota Statutes Section 122A.41, subdivision 6(a)(1) and (3) for conduct unbecoming a teacher, insubordination, and inefficiency in teaching.

The Employer's discharge of Grievant is upheld.

Dated this 3rd day of July, 2015.

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Carol Berg O'Toole